

STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of
the Request for Opinion Concerning
the Conduct of MICHAEL SCHNEIDER,
Senator,
State of Nevada,

Request for Opinion No.: 09-02C

Subject. /

INVESTIGATOR'S REPORT (Tab A):

Introduction:

On January 5, 2009 an Ethics Complaint was filed against Senator Michael Schneider (Schneider), alleging that he used his position to secure unwarranted privileges for himself and others, used governmental time, property and equipment for a nongovernmental purposes and used a legislative employee to perform personal services.

Jurisdiction:

As the state senator, no dispute exists that Schneider is a public officer, as defined by NRS 281A.160. Therefore, the Nevada Commission on Ethics (Commission) has jurisdiction to render an opinion in this matter, pursuant NRS 281A.280 and NRS 281A.440.

1 **Request for Opinion No. 09-02C (Ethics Complaint). (Tab B):**

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3 The Ethics Complaint filed by Edward T. Reed, Esq. (Reed) contains the following allegations:
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5 On the dates noted in the Complaint, Schneider allegedly violated NRS 281A.400.2 when he
6 used his position to benefit Dr. Daniel Royal (Daniel Royal) and Dean Friesen (Friesen); NRS
7 281A.400.8 (a) when he allegedly used government time, property and equipment for a
8 nongovernmental purpose and to benefit his personal interest; NRS 281A.400.8 (b) when he
9 allegedly used a legislative employee to perform personal services.
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11 **Response to the Ethics Complaint. (Tab C):**

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13 A response to the Ethics Complaint was received on January 26, 2009. Legal counsel Eileen
14 O'Grady (O'Grady) stated that Schneider did not violate any provisions of NRS281A because he
15 acted within his authority and responsibility.
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17 In addition, O'Grady stated that there is no commitment in a private capacity as defined in NRS
18 281A.420.8 to individuals of whom he allegedly secured unwarranted benefits. Furthermore,
19 O'Grady stated that one of the allegations, dated in the Complaint as February 9, 2006, is barred
20 by the statute of limitation in the Commission's Opinion 08-04C, In re Hardy. (Tab E, Exhibit
21 33). Finally, O'Grady stated that Schneider was allowed to follow up on legislation as noted in
22 the Commission Opinion 95-67C, In re Raggio. (Tab E, Exhibit 32).
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1 **Investigation Summary:**

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3 I interviewed the following individuals and reviewed the following documents:

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5 **Witnesses interviews and responses (Tab D):**

- 6
- 7 • Catherine Cortez Masto, witness, in person on January 28, 2009. (Tab D, Exhibit 1).
 - 8
 - 9 • Christine Guerri-Nyhus, Chief Deputy Attorney General, witness, in person on
 - 10 January 28, 2009. (Tab D, Exhibit 2).
 - 11
 - 12 • Wayne Fazzino, Attorney General's Special Investigator, via e-mail on February 11,
 - 13 2009. (Tab D, Exhibit 3).
 - 14
 - 15 • Dr. Daniel Royal, via e-mail on February 11, 14 and 19, 2009. (Tab D, Exhibit 4).
 - 16
 - 17 • Senator Michael Schneider, in person on February 12, 2009. (Tab D, Exhibit 5).
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 - 19 • Edward T. Reed, Requestor of the Ethics Complaint No. 09-03C, in person on
 - 20 February 12, 2009. (Tab D, Exhibit 6).
 - 21
 - 22 • Nancy Savage, Deputy Attorney General, witness, via e-mail on February 18, 2009.
 - 23 (Tab D, Exhibit 7).
 - 24
 - 25 • Dean Friesen, sent via e-mail on February 9, 2009. (Not received at the time of
 - 26 completion of this report), (Tab D, Exhibit 8).
 - 27
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1 **Documents. (Tab E):**

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3 I obtained and reviewed the following documents and materials relevant to the investigation:

- 4
5 • Response to Ethics Complaint 09-03C, (Tab E, Exhibit 9).
- 6
7 • Minutes from the Nevada Board of Homeopathic Medical Examiner's public meeting
8 on February 9, 2006. (Tab B, Exhibit 4).
- 9
10 • Complaint filed with the Nevada Board of Homeopathic Medical Examiners, dated
11 July 21, 2006. (Tab E, Exhibit 10).
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13 • Legal Opinion from Legislative Counsel Bureau issued upon request of Schneider,
14 dated January 31, 2007. (Tab B, Exhibit 10).
- 15
16 • Letter from Edward Reed to Daniel Royal, dated April 4, 2007. (Tab E, Exhibit 11).
- 17
18 • Letter from Edward Reed to Dean Friesen, dated April 4, 2007. (Tab E, Exhibit 12).
- 19
20 • Letter from Daniel Royal to Edward Reed, dated April 10, 2007. (Tab E, Exhibit 13).
- 21
22 • Letter from Valerie Kilgore to the Attorney General, dated April 18, 2007. (Tab B,
23 Exhibit 5).
- 24
25 • Letter from Edward Reed to Lawrence Semenza, dated April 19, 2007. (Tab E,
26 Exhibit 14).
- 27
28 • Letter from Edward Reed to Daniel Royal, dated April 23, 2007. (Tab E, Exhibit 15).

- Letter from Assistant Attorney General Randy Munn to Valerie Kilgore, dated May 3, 2007. (Tab B, Exhibit 6).
- Letter from Edward Reed to Lawrence Semenza, dated May 4, 2007. (Tab E, Exhibit 16).
- Letter from Daniel Royal to Nancy Eklof, dated May 25, 2007. (Tab E, Exhibit 17).
- Letter from Edward Reed to Lawrence Semenza, dated June 7, 2007. (Tab E, Exhibit 18).
- Letter from Lawrence Semenza to Edward Reed, dated June 12, 2007. (Tab E, Exhibit 19).
- Letter from Edward Reed to Lawrence Semenza, dated June 27, 2007. (Tab E, Exhibit 20).
- Letter from Lawrence Semenza to Edward Reed, dated July 5, 2007. (Tab E, Exhibit 21).
- Letter from Edward Reed to Lawrence Semenza, dated August 16, 2007. (Tab E, Exhibit 22).
- Letter from Lawrence Semenza to Edward Reed, dated September 14, 2007. (Tab E, Exhibit 23).
- Legal Opinion from Legislative Counsel Bureau issued upon request of Schneider, dated September 13, 2007. (Tab B, Exhibit 10).

- 1 • Agenda and minutes from the Nevada Board of Homeopathic Medical Examiners
2 meeting on September 15, 2007. (Tab B, Exhibit 8).
- 3
- 4 • Order of Summary Suspension in the matter of Dr. Daniel Royal, dated September
5 18, 2007. (Tab B, Exhibit 9).
- 6
- 7 • Memorandum to General Masto from Christine Guerri-Nyhus dated October 15,
8 2007, and October 23, 2007. (Tab E, Exhibit 24).
- 9
- 10 • Agenda and minutes from the Nevada Board of Homeopathic Medical Examiners
11 meeting on October 18, 2007. (Tab B, Exhibit 13).
- 12
- 13 • Letter from Ann Pongracz to Lawrence Semenza and Nancy Savage, dated October
14 24, 2007. (Tab B, Exhibit 29).
- 15
- 16 • Letter from Chief Deputy Christine Guerri-Nyhus to the Board of Homeopathic
17 Medical Examiners, dated October 24, 2007. (Tab B, Exhibit 16).
- 18
- 19 • Declaration of Masto. (Tab E, Exhibit 25).
- 20
- 21 • Declaration of Guerri-Nyhus. (Tab E, Exhibit 26).
- 22
- 23 • Declaration of Linda Fitzgerald, Executive Assistant for Catherine Cortez Masto.
24 (Tab E, Exhibit 27).
- 25
- 26 • Declaration of Ann Pongracz, Deputy Attorney General. (Tab E, Exhibit 28).
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- 28 • Excerpts from appointment book of Linda Fitzgerald. (Tab E, Exhibit 29).

- 1 • NIRB mission statement. (Tab E, Exhibit 30).
- 2
- 3 • Excerpt from Legislative Manual, p.163 "Legal Division". (Tab E, Exhibit 31).
- 4
- 5 • Commission's Request for Opinion No. 95-67C, In re Raggio. (Tab E, Exhibit 32).
- 6
- 7 • Transcripts of panel proceeding of Commission's Request for Opinion 08-04C, In re
- 8 Hardy. (Tab E, Exhibit 33).
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11 **Investigative findings:**

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13 The following are my investigative findings:

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15 Schneider is a public officer as defined in NRS 281A.160. He was first elected to Nevada

16 Assembly in 1992, and elected to Nevada Senate in 1996. His current term expires in 2012.

17

18 On at about April 2005, Schneider, Daniel Royal, and Friesen met during the legislative session.

19 Royal stated that he, Friesen and Schneider all shared common interest in alternative medicine

20 and they began working together on an Amendment of Assembly Bill 208, (Tab D, Exhibit 4). In

21 addition, Schneider, Daniel Royal, and Friesen worked together to establish Nevada Institutional

22 Review Board (NIRB) that was created for a purpose of monitoring clinical research in

23 complementary integrative medicine.

24

25 The NIRB was established on June 17, 2005. (Tab E, Exhibit 30). The NIRB was to be

26 accountable to the Nevada Board of Homeopathic Medical Examiners (NBHME), of which

27 Daniel Royal was the president. Schneider stated that aside of professional relationship, he

28 visited Daniel Royal's clinic in Las Vegas on several occasions on undisclosed dates

1 approximately three years ago (Tab D, Exhibit 5). Daniel Royal's recollection places
2 Schneider's visit to his clinic on or about July 2005.

3
4 The members of NBHME felt that Daniel Royal had a conflict of interest being member of NIRB
5 as well as president of NBHME, since the NIRB was accountable to the NBHME. In addition,
6 some members felt that NIRB was uncooperative to NBHME's requests and they decided to
7 remove Daniel Royal as NBHME president during the February 9, 2006 meeting.

8 The meeting was attended by Schneider who made critical statements directed to the Board.
9 After Schneider's comments, Daniel Royal attempted to prematurely adjourn the meeting and
10 they both departed. The remaining board members however, continued the meeting and in fact
11 removed Daniel Royal as the Board's president (Tab B, Exhibit 4).

12
13 On undisclosed date of spring 2007, the NBHME board learned that Daniel Royal requested
14 billing documents from the Attorney General's Office. As further described in this report, an
15 ongoing investigation against Daniel Royal alleging that he allowed an unlicensed individual to
16 practice medicine in his clinic was in place. The NBHME board felt that the documents
17 requested by Daniel Royal were compromising the investigation and requested the Attorney
18 General's Office to subpoena Daniel Royal to return the documents. As noted in complaint, some
19 documents were also in possession of Friesen, who obtained them under alleged false pretense.

20 On April 18, 2007 Valerie Kilgore, the NBHME president requested that the subpoena be
21 enforced via court order (Tab B, Exhibit 5).

22
23 On April 10, 2007 Attorney General's Investigator Fazzino, attempted to serve subpoena on
24 Friesen and Royal in Schneider's office in Carson City. Fazzino recalls the nature of conversation
25 with Schneider (Tab D, Exhibit 3), in which Schneider said that Friesen was on the way to Reno
26 airport. Furthermore, Fazzino concurred with Schneider's statement that Friesen was not present.

1 The same day, April 10, 2007 Schneider allegedly called Masto to express his concerns that
2 investigators from the Attorney General's office came to his office to serve subpoenas on Daniel
3 Royal and Dean Friesen (Tab E, Exhibit 25, Declaration of Masto ¶ 8). During my interview
4 with Schneider, he confirmed that investigators from the Attorney General's Office came to his
5 office in Carson City sometime in April 2007, but does not recall exact date. Schneider recalls
6 having conversation with the investigator and that the Investigators asked about Friesen. Aside of
7 that, Schneider is unsure of the content of said conversation. Schneider denies any knowledge of
8 subpoenas (Tab D, Exhibit 5 page 4, line 4), and stated that he never spoke to Masto about
9 subpoenas, which contradicts Masto's statement (Tab E, Exhibit 25, Declaration of Masto, ¶ 8).
10 In addition, evidence from the appointment book of Masto's Assistant Linda Fitzgerald (Tab E,
11 Exhibit 29), shows that the call took place around 10 a.m., but the details of the call are unknown
12 as the appointment book notes only "Senator Schneider Re: Homeopathic Med. Examiners".
13 According to Masto, she advised Schneider that her investigators were carrying their duties, and
14 she was unwilling to or allowed to say more on the subject.

15
16 As to the available information related to subpoenas, it appears that Daniel Royal never
17 answered the subpoena; Friesen apparently did and appeared without requested documents. (Tab
18 B, Exhibit 1, ¶7). A letter dated May 3, 2007 was issued by Attorney General's office explaining
19 to the NBHME that the subpoenas will not be enforced via court order as they requested. (Tab B,
20 Exhibit 6). Per Masto's declaration and our interview, the April 10, 2007 was her first contact
21 with Schneider aside of prior limited working relationship.

22
23 A complaint against Daniel Royal and Dean Friesen was filed by Friesen's former girlfriend
24 Nancy Lucas on July 21, 2006, alleging that Royal allowed Friesen, an unlicensed pharmacist to
25 practice medicine in his clinic in Las Vegas. The Attorney General's Office took an interest in
26 the case, finding that Friesen was not licensed in any medical discipline in the State of Nevada.
27 Daniel Royal's homeopathic license was summarily suspended by NBHME on September 15,
28 2007. (Tab B, Exhibit 9). A hearing on this matter was scheduled on October 25, 2007.

1 On October 8, 2007, search warrant was executed by the Attorney General's Office in Daniel
2 Royal's clinic in Las Vegas. The evidence seized during search is described in Search Warrant
3 Return issued on October 9, 2007 by Investigator Michelle Chase (Chase). Per Chase's affidavit
4 "substantial evidence" supporting allegation against Daniel Royal was discovered. (Tab B,
5 Exhibit 12).

6
7 On October 8, 2007, the same day when search warrant was executed in Daniel Royal's medical
8 office, Schneider requested appointment with Masto in her Las Vegas office (Dated as October
9 9, 2007 in Exhibit 25, Declaration of Masto ¶ 9. This date is in conflict with others recollection.
10 See Tab E, Exhibit 26, Declaration of Guerici-Nyhus ¶3). The meeting was attended by
11 Schneider, Masto, and the Chief Deputy Attorney General Christine Guerici-Nyhus (Guerici-
12 Nyhus). Schneider expressed his concerns about NBHME, concern about the legal counsel to the
13 NBHME Edward Reed, and concerns regarding the summary suspension of Daniel Royal's
14 homeopathic license. All parties present on this meeting independently stated that there were no
15 promises made as to the outcome of the discussed matter. (Tab E, Exhibit 25, Declaration of
16 Masto ¶¶ 9-11), (Tab E, Exhibit 26, Declaration of Guerici-Nyhus ¶ 3).

17
18 Subsequently to this meeting, Masto directed the members of her staff to investigate Schneider's
19 concerns. On October 18, 2007, Attorney General's Office called for "non meeting" followed by
20 emergency meeting of the NBHME. As a result of this meeting, summary suspension of Daniel
21 Royal's homeopathic license was vacated. (Tab B, Exhibit 13). As noted above, a hearing on
22 Daniel Royal's matter was scheduled on October 25, 2007. However, the hearing officer
23 scheduled to hear this matter, Ann Pongracz, secured job in the Office of Attorney General and
24 was required to recuse herself from the hearing as a condition of her being hired. (Tab E, Exhibit
25 28, Declaration of Pongracz). The hearing on Daniel Royal's case never took a place, and Daniel
26 Royal kept his homeopathic license.

1 As to the alleged violation of the NRS 281A.400.8 (a), raised by the complainant, it appears that
2 Schneider obtained legal opinions from Legislative Counsel Bureau according to law. Schneider
3 is a member of the Committee on Commerce and Labor, which has jurisdiction over the
4 NBHME; therefore, such request appears to be in accordance with his duties and with the rules
5 noted in Legislative Manual. (Tab E, Exhibit 31). Furthermore, if these opinions were requested
6 and issued under Schneider's legal authority, the allegation of using legislative employee raised
7 by the complainant appears to be invalid.

8
9 I note that the case is laden with remarkable coincidental circumstances. The issue however, is
10 the existence of a commitment in a private capacity in order to prove the alleged violation of the
11 Ethics in Government Laws. Based on the evidence collected, the commitment in a private
12 capacity between Schneider, Friesen and Daniel Royal, cannot be established as defined in NRS
13 281A.420.8. Therefore, there is no evidence that Schneider secured unwarranted privileges for
14 himself or others.

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16 **Investigative conclusion:**
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18 The evidence DOES NOT support the claim that Schneider violated NRS 281A.400.2 or NRS
19 281A.400.8 on dates alleged in the Complaint:
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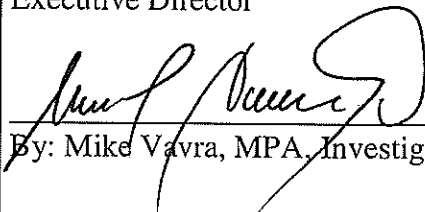
- 21 1. The allegations on February 9, 2006 of using his office to benefit Daniel Royal are time
22 barred per Commission Opinion 08-04C.
- 23
24 2. By using his position to obtain unwarranted privileges to himself and others by
25 intervening on matters related to Daniel Royal.
- 26
27 3. By using the government time, equipment, and property to benefit his personal interest by
28 obtaining legal opinions.

1 4. By using legislative employee benefit his personal interest when he obtained legal
2 opinions.
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5 Therefore, on the allegations in Ethics Complaint No. 09-02C, I conclude that Michael Schneider
6 DID NOT violate Ethics in Government Laws on dates as alleged.
7
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9 Dated this 22 day of February, 2009.
10

11 NEVADA COMMISSION ON ETHICS
12 Patricia D. Cafferata, Esq.
13 Executive Director

14 
15 By: Mike Vavra, MPA, Investigator.
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